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3                   UNITED STATES DISTRICT COURT  
4                   WESTERN DISTRICT OF WASHINGTON  
5                   AT TACOMA

6                   FRANK FISHER, a single man,

7                   Plaintiff,

8                   v.

9                   J. BYRON HOLCOMB and JANE DOE  
10                  HOLCOMB, a marital community,

11                  Defendants.

CASE NO. C10-5510BHS

ORDER GRANTING MOTION  
FOR MONEY JUDGMENT  
FOR ATTORNEY FEES AND  
COSTS AND MOTION TO  
HONOR PRAECIPE

12                  This matter comes before the Court on Plaintiff's ("Fisher") motions to reduce  
13 award of fees and costs to judgment (Dkt. 34) and motion (Dkt. 35) for an order directing  
14 the clerk to honor praecipe to send a certified copy of the September 1, 2010, order of  
15 remand (Dkt. 29) to the clerk of the Kitsap County Superior Court. The Court has  
16 considered the pleadings filed in support of and in opposition to the motions and the  
17 remainder of the file and hereby grants Fisher's motions for the reasons stated herein.  
18

19                  **I. FACTUAL AND PROCEDURAL HISTORY**

20                  On September 1, 2010, the Court remanded this matter to state court for lack of  
21 subject matter jurisdiction. Dkt. 29. On September 7, 2010, Defendants (collectively  
22 "Holcomb") appealed. Dkt. 30. On October 26, 2010, the Court issued a minute order  
23 informing the parties that it would not rule on any pending motions until Holcomb's  
24 appeal was resolved and the Ninth Circuit issued its mandate. Dkt. 43.

25                  On September 14, 2010, Fisher moved the Court to award fees and costs for  
26 having to litigate this removal matter in the absence of subject matter jurisdiction. Dkt.  
27

1 34. On September 24, 2010, Holcomb opposed the motion (Dkt. 37), and on October 1,  
 2 2010, Fisher replied (Dkt. 39).

3 On September 16, 2010, Fisher moved the Court for an order directing the clerk to  
 4 honor its praecipe to send a certified copy of the Court's prior order (Dkt. 29) remanding  
 5 the matter. Dkt. 35. On September 24, 2010, Holcomb opposed the motion (Dkt. 36), and  
 6 on October, 1, 2010, Fisher replied (Dkt. 40).

7 On November 2, 2010, the United States Court of Appeals for the Ninth Circuit  
 8 affirmed this Court's order to remand. Dkt. 44 (denying Defendants' appeal and finding  
 9 the appeal to be frivolous). On November 24, 2010, the Ninth Circuit issued its mandate  
 10 with regard to the order denying Holcomb's appeal, which returned jurisdiction to this  
 11 court for disposition of any pending motions. Dkt. 45.

## 13 II. DISCUSSION

### 14 A. Fisher's Motion for Fees and Costs

15 Fisher moves the Court to award "fees and costs in the amount of \$15,344.19<sup>1</sup> in  
 16 favor of [Fisher] and against [Holcomb]." Dkt. 34 (attaching accounting for fees and  
 17 costs).<sup>2</sup> The Court previously remanded this matter for lack of subject matter jurisdiction.  
 18 Dkt. 29. Within that remand order, the Court concluded that no basis in law or fact  
 19 justified Holcomb's removal of this matter to federal court. Based on that finding, the  
 20 Court ordered that "Holcomb must pay reasonable attorney fees and costs" pursuant to 28  
 21 U.S.C. 1447(c). Dkt. 29 at 2; *see also* Fed. R. Civ. P. 52(d)(2)(C) (permitting district  
 22 court to determine liability for attorney fees and costs before entering the money  
 23 judgment).

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 25  
 26 <sup>1</sup>This amount reflects \$14,808.75 in attorney fees and \$535.44 in costs.

27 <sup>2</sup>The Court has reviewed Fisher's accounting of its attorney fees and costs associated  
 28 with litigating the motion for remand and finds the amount of \$15,344.19 to be reasonable.

In opposition, Holcomb fails to articulate a basis on which to deny Fisher's motion for judgment on fees and costs. *See* Dkt. 37. The Court agrees with Fisher that § 1447(c) provides this Court with authority to award fees and costs associated with a case wrongfully removed to federal court, as is the case here.

Based on the foregoing, the Court awards a money judgment for the fees and costs (\$15,344.19) associated with Holcomb's wrongfully removed, if not frivolously removed, case.

#### B. Fisher's Motion to Honor Praeclipe

The Court orders the Clerk to mail a "certified copy of the order of remand . . . to the clerk" of the Kitsap County Court so that "[t]he State Court may thereupon proceed with [this] case." 28 U.S.C. 1447(c).<sup>3</sup>

### III. ORDER

Therefore, it is hereby **ORDERED** that:

1. The Court **GRANTS** Fisher's motion for fees and costs (Dkt. 34). The Clerk **SHALL PREPARE AND ENTER JUDGMENT** in favor of Fisher in the total amount of \$15,344.19 against J. Byron Holcomb and Jane Doe Holcomb, husband and wife, to bear interest at the post-judgment statutory rate.

2. The Clerk **SHALL SEND** a certified copy of the Court's order on remand (Dkt. 29) to the clerk of the Kitsap County Court.

DATED this 3rd day of December, 2010.



BENJAMIN H. SETTLE  
United States District Judge

<sup>3</sup>To prevent the order of remand from being enforced requires a stay or supersedeas bond to be obtained; Holcomb obtained neither. *See* Fed. R. App. Pro. 8, Fed. R. Civ. P. 62.